

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRIARCH ARCHITECTURAL SERVICES, P.C.,

Plaintiff,

-against-

Civil Action
1:11-CV-02708
(AKH)

MEDALLION INC., VLADIMIR
VORONCHENKO and GARTH HAYDEN
ARCHITECTS,

Defendants.

-----X
VOLUME II

May 18, 2012
10:03 a.m.

Deposition of MICHAELA DEISS, taken by
Defendants, pursuant to adjournment, at the
offices of Sam P. Israel, P.C., 23rd Floor,
One Liberty Plaza, New York, New York 10006,
before Anneliese R. Tursi, a Registered
Professional Reporter and Notary Public within
and for the State of New York.



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M I C H A E L A D E I S S,
having been previously duly sworn, was
examined and testified further as
follows:

EXAMINATION BY MR. ISRAEL:

Q. Hi, Ms. Deiss. My name is Sam
Israel, and I represent Medallion and Vladimir
Voronchenko.

I'm going to be continuing with
questions that were started last week. You
were asked questions by the counsel for Garth
Hayden. I represent defendant Medallion Inc.
and Vladimir Voronchenko and I'm going to be
asking questions today for Medallion, Inc.

Some of the things I'm going to
cover with you, you covered in part, but not
completely from my perspective. So I'm going
to follow-up on some things. So the order may
be a little bit out of order from what you
experienced last week. I'm going to try to
fill in gaps rather than taking you from
beginning to end.

I subscribe to the instructions
you were given last week, about the



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deposition, how it will go forward, including
that if you need a break at any time, you let
me know and we will take a break. If you
don't understand a question I'm asking, you
let me know and I will attempt to rephrase the
question so that you can understand it.

Now, in reviewing the plaintiff's
mandatory disclosures in this case, it says
that your area of testimony in this case --
I'm going to represent this to you, I'm not
going to show you a copy, I can make a copy if
you need it; it says that you are prepared to
testify about Triarch's registration of its
drawings and renderings with the United States
Copyright Office.

Is that a process that you are
familiar with?

A. Not technically very much.

Q. Well, were you the person at
Triarch who was responsible for shepherding
the drawings or the designs through the
copyright registration process?

A. Stephen Corelli and myself.

MR. ISRAEL: I'm going to have



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marked as, I don't know what the last number of the deposition exhibits were so what I'm going to do is, I'm going to start by calling this Medallion Exhibit 1, and all of these sequential numbers will be in connection with your deposition conducted by Medallion. So I'm having marked as Exhibit 1, a copy of, what's been represented to Medallion Inc. as a copy of a certificate of registration, and the registration number is VAU1-020-230.

(Medallion Exhibit 1, copy of Certificate of Registration, No. VAU1-020-230 marked for identification, as of this date.)

Q. Have you ever seen this document before?

A. No.

Q. Since you are the person who has been held out as somebody who is familiar with the registration of drawings and renderings of the United States Copyright Office, do you know on this document what the reference is to

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this, being what's registered being a work for hire, work made for hire?

MR. MANDEL: Objection.

Q. You can answer. You can answer.

A. I don't understand what you want to say about this.

Q. Was this a work made for hire, what you registered here?

MR. MANDEL: Objection.

A. I don't really understand what you mean, frankly.

Q. Well, this is a document that purports to be a certificate of registration that your counsel has appended to papers that were filed in this case as a certificate of registration for copyrighted material that the suit, this lawsuit is based upon, your lawsuit against my client.

A. Yes.

Q. And this registration certificate says that what you registered is a, quote-unquote, work made for hire.

Now, as I'm asking you questions on behalf of my client concerning the basis

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for this lawsuit, including the registration certificate for the work that you claim was infringed, I would like to know whether or not this is indeed a work made for hire that you are suing upon?

MR. MANDEL: Objection, asked and answered, and calls for a legal conclusion.

MR. ISRAEL: Actually, she asked me a question. She said I don't understand what you are asking. So I attempted to rephrase it.

Q. Can you answer the question now?

MR. MANDEL: Same objection.

A. I understand that we have been commissioned to do this work.

Q. And who were you commissioned by?

A. By Mr. Voronchenko

Q. So this was a work made for hire for Mr. Voronchenko?

MR. MANDEL: Objection.

Q. Is that right?

A. Yes.

Q. Was it a work made for hire for

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Medallion, Inc.?

A. Medallion Inc. was the corporation that signed the contract with us.

Q. Well, which was it, a work made for hire for Medallion Inc. or Mr. Voronchenko?

MR. MANDEL: Objection.

You may answer.

A. Technically, I would say it was Medallion Inc. representing Mr. Voronchenko.

Q. So it was a work made for hire for Medallion Inc.?

MR. MANDEL: Objection. Calls for a legal conclusion. Asked and answered.

Q. You are the person who is supposed to have information about the registration. We haven't received a copy of the application for the registration. So unless you can answer these questions, it would be up to me to guess as to what's meant by this because we don't have the application. So I need you, as the witness who knows about these things, to answer my questions.

MR. MANDEL: Objection.

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Q. If you can't answer them, I will conclude that you don't know who this was and which entity it was --

A. I have answered.

MR. MANDEL: Let him finish his speech.

Q. -- who it was made for. Do you know who it was made for?

MR. MANDEL: Objection. This is an argument. It is not actually a question. There were six or seven different questions in there through the course of your speech.

Q. Can you answer my question?

MR. MANDEL: Please don't interrupt me.

MR. ISRAEL: This is what's called a speaking objection. Limit it to an objection to form.

MR. MANDEL: Asked and answered. You are limited to asking questions not making speeches.

MR. ISRAEL: This is a speaking objection.

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Q. Can you answer my question. You started to before your counsel started speaking. What is your answer?

MR. MANDEL: Objection. Same objection.

Q. Can you answer the question.

MR. MANDEL: If you understand what the question is, you can answer it.

A. My understanding to the question is that, technically, Medallion signed the contract with us representing Mr. Voronchenko.

Q. Now, was this for -- was this registration for designs or was it for technical plans?

MR. MANDEL: Objection: calls for a legal conclusion. You may answer.

Q. No, I'm asking whether it was technical plans that you registered, or designs?

A. Architectural drawings.

Q. Just architectural drawings, is that right?

A. That's correct.

Q. So you weren't seeking to register

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designs, is that right?

MR. MANDEL: Objection.

A. Architectural drawings, in this particular case we present our designs.

Q. Was the registration for interior designs or for structural architectural work?

MR. MANDEL: Objection: calls for a legal conclusion.

Q. You can answer.

A. The registration was for architectural drawings that include interior design. There was no structural work involved in this project.

Q. Do you know what the difference is between structural work and interior design?

MR. MANDEL: Objection. You may answer.

A. I do.

Q. What's the difference?

A. Sometimes there is no big difference. Usually structural work includes engineering. It includes removal of major partitions.

Q. Anything else?

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A. No.

Q. And there was no structural work that was done on this job, correct?

MR. MANDEL: Objection.

A. There was some structural work done on this job.

Q. I'm confused, you just said a moment ago there was no structural work done on the job.

MR. ISRAEL: Can you read back her answer where she just said that a moment ago, please.

(Record read.)

Q. Do you want to retract that answer?

MR. MANDEL: Objection.

A. I'm not retracting. I'm actually correcting it.

Q. Oh.

A. Saying there was some minor structural work involved.

Q. All right, what was the structural work?

MR. MANDEL: Objection. You may

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answer.

A. Some of the partitions were going to be changed.

Q. How were they going to be changed?

A. And some openings were going to be created.

Q. And was that reflected in any drawings?

A. Yes, it was.

Q. Did you register those drawings?

A. Yes, they were registered.

Q. So is it fair to say that you registered some structural work?

MR. MANDEL: Objection.

Q. You can answer.

A. I have no answer to that. I mean, I answered your question before.

Q. No, this is a different question. This is a question that's often asked in connection with copyright cases, especially in the architectural field.

MR. ISRAEL: Can you read the question back, please.

(Record read.)



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MR. MANDEL: Objection.

Q. You can answer.

A. I guess so.

Q. You don't know?

A. Well, I don't know what you are looking for me to say. You are trying to confuse me.

Q. I'm looking for you to say the truth.

A. I'm saying the truth.

MR. MANDEL: Objection. There is no question there. He said he is looking for you to say the truth.

Q. You said you don't now what you are looking for and I'm answering your question in the interest of giving you some clarity. I'm looking for the truth. The question was did you register any structural work with the Copyright Office. And what is your answer on that?

MR. MANDEL: Objection.

Q. There is no need to laugh.

A. There was some structural work that was registered on our architectural



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plans.

Q. Okay, that's good. Now, the structural work that is registered, is that reflected in the copyright registration certificate that I placed in front of you that is Exhibit No. 1 to this deposition?

MR. MANDEL: Objection.

A. I don't know.

Q. Well, if you don't know and you are the witness who has information about the registration process, what witness am I going to get this information from?

MR. MANDEL: Objection.

A. I don't think that that was a question. That was a statement.

Q. No, it was a question. I'm asking you what witness am I going to get that information from if you don't know the answer to it.

MR. MANDEL: The Copyright Office.

Mr. Israel, you know you can get this information from the Copyright Office.

MR. ISRAEL: I'm not going to put the Copyright Office on the stand during



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the trial at this case. And if you don't understand the relevance of these questions, pick up a copyright textbook. I have every right to ask these questions and your client, represented as the witness knowledgeable about the registration, should be able to answer them.

If not, that means that I'm not able to ask questions that are essential to this case about the registration of your copyright that you are suing on and what is it for.

Now, if you are going to take the position that there is no answer to this question and you are not going to put on proof as to this question at trial, I'll let it go and we will just have a record that you are not going to put on proof on this issue at trial and I won't bother asking the witness any further questions about it.

However, if you are going to take the position at trial that you



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registered structural drawings and you registered any other type of drawings, I get to ask those questions.

So what do you want to do?

MR. MANDEL: I'm not here to answer questions. I will just state for the record that all the information that Mr. Israel is asking about now is available from the Copyright Office. For whatever reason Mr. Israel has decided not to obtain that information from the Copyright Office, and you are free to ask as many questions as you would like today. We can do this for as long as you would like. It is obvious she has provided all the information she has on this topic, but if you would like to continue inquiring on this topic, you should go right around.

MR. ISRAEL: Okay, let's have my last question read back before I was explaining to the counsel the necessity for me to get answers to this question. It is the last question asked. Let's

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see if we can get an answer to it.

MR. MANDEL: Read back the answer as well, please.

(Record read.)

MR. ISRAEL: That's the question.

MR. MANDEL: Objection. You may answer.

A. I'm involved with all architectural work. We have attorneys and representation to do the registration with the Copyright Office. I do not have an answer to your technical questions.

Q. I'm asking you about architectural questions. Do you know what was registered with the Copyright Office?

MR. MANDEL: Objection. You may answer.

A. Our architectural plans.

Q. Do those architectural plans include structural drawings or did they include design drawings?

MR. MANDEL: Objection: asked and answered several times now.

A. They are not specific structural

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drawings. Architectural drawings, as we all know, include some structural work and some design work.

Q. Are you aware that architectural and technical drawings can't be registered with the Copyright Office on the same application?

MR. MANDEL: Objection.

Q. Are you aware of that?

MR. MANDEL: That's a ridiculous question that calls for a legal conclusion, but if you are aware of the law regarding what can and cannot be included in a single copyright application, you can answer.

MR. ISRAEL: I'm going to need the speech he just made on an expedited basis. I would like it for Monday, for Wednesday, the same time I'm getting the other information from you. So Wednesday I need a record of what he just said.

And could you also read back my last question.

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(Record read.)

MR. MANDEL: Same objection.

A. I do not have knowledge of the technical side of an application for registration with the Copyright Office.

Q. Okay, but when you had registered your work, the work that you are suing on here, did you register at the same time architectural works and technical drawings?

MR. MANDEL: Objection.

A. I don't know.

Q. You don't know. Okay, that's fair. Is it fair to say also that you don't know, in suing on this registration, namely, in suing on registration No. VAU1-020-230, you're not sure as to whether you are suing on the basis of registered architectural work and technical drawings. Is that right?

MR. MANDEL: Objection. Calls for a legal conclusion.

A. I don't know.

MR. ISRAEL: I'm going to have marked as Exhibit No. 2, a registration, what purports to be a registration

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that's being sued upon in this case for the author Triarch Architectural Services, PC, and the registration number is VAU1-022-344.

(Medallion Exhibit 2, registration No. VAU1-022-344 marked for identification, as of this date.)

Q. Have you ever seen that document before?

A. No.

Q. What's the difference between that which is registered under registration VAU1-020-230 and that which is registered under VAU1-022-344?

A. The title of the work is different.

Q. Okay, and what are the two different titles of the work?

A. One calls for interior renovation renderings, and one calls for plans and interior renovation.

Q. And what is the difference between those two things?

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A. I think that one, the first one, interior renovation renderings calls for the imaging, the two-dimensional imaging that we created for the project. And the other one calls for the architectural work.

MR. PANTELIDIS: What's the title of the second one, sorry?

THE WITNESS: Plans and interior renovation. It is actually the first one I received.

The second one says interior renovation renderings.

Q. What does the two-dimensional imaging consist of?

MR. MANDEL: Objection: asked and answered.

Q. You can answer.

A. It consists of renderings, technical renderings that have been created from the architectural drawings.

Q. Now, would I be correct in assuming that the language here where it says it is a work made for hire, you are not sure as to who this work made for hire was for?

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MR. MANDEL: Objection: asked and answered several times.

Q. Well, I'm asking about a different exhibit now. I'm asking about a different registration certificate, albeit another one that you are suing for copyright infringement based upon.

So the question is with regard to this registration, the one that ends with the last three digits 344, are you aware of who this was a work made for hire for?

MR. MANDEL: Objection: calls for legal conclusion.

A. If you intend who commissioned us to do this work, Mr. Voronchenko did.

Q. Since this is your certificate and somebody from your office presumably signed the application for it, and when the application was filled out it indicated that someone, that it was a work made for hire which the applications require that you do, was it indicated on the application that this was a work made for Mr. Voronchenko?

MR. MANDEL: Objection.

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A. I imagine that since the contract was signed by Medallion and Garry Braverman representing Medallion, we probably registered this in the name of Medallion which is Mr. Voronchenko's corporation.

Q. But you don't know that for sure?

MR. MANDEL: Objection. You may answer.

A. I have no -- I haven't researched it, but I know for sure it is his corporation. That's the way he represented himself.

Q. Do you keep a copy of the application that was filed?

A. My attorney has a copy of the application that was filed.

Q. The attorney who is sitting here today with you?

A. The attorney that is sitting here today, and my previous attorney.

Q. Do you have any understanding why the attorney who is sitting here today hasn't produced your application in this case yet?

MR. MANDEL: Objection.

Attorney-client privilege objection.

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To the extent you have some knowledge about what your attorneys have or have not produced that is separate and apart from what your attorneys have told you, you are free to answer. But to the extent your knowledge comes from what your attorneys have told you, then I instruct you not to answer.

Q. I'm not asking you for a communication with your lawyer. I'm asking you if you know why it is that your lawyers haven't produced the application, the registration that is being sued on in this case?

A. I don't know.

MR. MANDEL: Same objection. Same instruction.

Q. But you turned it over to them, is that correct?

MR. MANDEL: Objection.

A. I turned over what?

Q. The application that was filed for the registration for the copyright.

MR. MANDEL: Objection.

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THE WITNESS: What am I supposed to say?

Q. You are supposed to say the truth.

A. Yeah, yeah, I know I'm supposed to say the truth. I did not personally turn it over.

Q. Did someone from your office turn it over?

MR. MANDEL: Objection.

A. Not directly. I mean, it's been happening in between attorneys.

Q. Do you know which attorney you turned it over to?

MR. MANDEL: Objection.

A. What do you mean which attorney I turned it over to? When?

Q. I don't know when you turned it over to anyone. I'm asking you, the application for the copyright application which we have been talking to, I'm asking which lawyer you turned the application over to in connection with this case?

MR. MANDEL: Objection.

A. I don't understand what you mean

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by turning over. We had an attorney who registered this on our behalf.

Q. Right. And at some point an application was filed?

MR. MANDEL: Objection.

A. That's correct.

Q. And somebody from Triarch had to sign the application?

A. That's correct.

MR. MANDEL: Objection.

Q. Which means at some point a person from Triarch was in possession of the application?

MR. MANDEL: Objection.

Q. Correct?

A. I imagine. I don't know. It wasn't me.

Q. Do you know who it was?

MR. MANDEL: Objection.

A. If it was signed by someone in our office, it must have been Stephen Corelli, my partner.

MR. ISRAEL: Let's turn to another exhibit. We will come back to these.

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I'm going to have marked as Exhibit No. 3, a document that, it is a little cut off but it says at the top "please take notice" and it is Exhibit D to the declaration of Evan Mandel that was submitted to the court in this case on, it is dated March 23rd, 2012.

(Medallion Exhibit 3, Exhibit D to the declaration of Evan Mandel, date submitted to the court, March 23rd, 2012 marked for identification, as of this date.)

Q. Have you ever seen this document before?

A. I don't remember.

Q. All right, well, this purports to be a lien that was filed in Triarch's name and it was filed against Medallion on property that is owned by Medallion. I'll make that representation to you. And it says that labor was performed for architectural and design services and it said the agreed fee for professional services is \$204,000. And if you look in the middle of the page, you will see

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that the agreed fee for the professional services was \$204,000.

Was that the fee that was agreed upon between Triarch and Medallion for the work that Triarch was to do for Medallion under contract?

MR. MANDEL: Objection. You may answer.

A. Yes, it was.

Q. All right. And it says beneath that, the amount unpaid to the lienor for said labor performed is \$173,000. Do you see that?

A. Yes, I do.

Q. What was the work that Medallion paid for and what was the work that Medallion did not pay for?

MR. MANDEL: Objection.

A. I don't recall exactly what our invoices specified, but most of the work to be performed was not paid for by Medallion.

Q. Was any of the work paid for?

A. Some of the work was paid for.

Q. What was paid for?

MR. MANDEL: Objection. You can

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answer. If you can, you may answer.

A. We received an initial retainer for the work and one part of one of our invoices was paid.

MR. ISRAEL: Move to strike.

Q. The question is what work was paid for.

MR. MANDEL: Objection: asked and answered several times.

Q. If no work was paid for, that's fine, you can tell me that. If some work was paid for, I would like to know what that work was.

MR. MANDEL: Objection: asked and answered several times now. If you have anything to add, you should feel free to do so.

A. No, I don't have anything to add, no.

Q. Are you refusing to answer the question?

MR. MANDEL: Objection: argumentative. Don't answer the question. That's argumentative. Don't

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respond to that.

MR. ISRAEL: Let's get the court on the phone. We're going to take a break. We're going off the record. I'm going to call the judge. I'm going to need you to read that back to the court. (Recess taken.)

MR. ISRAEL: We are going to resume the deposition on another day. I don't have the patience, I'm not required to and I don't have the inclination to force through this deposition when counsel is not allowing the witness to answer questions. So we will resume on another day. Thank you.

MR. MANDEL: I will add something. We will not be returning on another day. This is the second day on which is Ms. Deiss was made available. Everyone else has reorganized their schedule to accommodate Mr. Israel. Mr. Israel has asked -- Mr. Israel did not attend some of the first day of Ms. Deiss's deposition. Ms. Deiss's deposition has

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already lasted approximately eight hours at this point. There were more than seven hours of time on the record spent on the first day of Ms. Deiss's deposition. And what is obvious now is that Mr. Israel is not prepared to continue with the deposition. And he has just left the room.

So you know what I think I'm going to do at this point is, I'm going to get the court on the phone, we will call Mr. Israel back in and we will give him one more chance to continue this deposition today.

MR. PANTELIDIS: Just, I will just put a statement on the record. If Mr. Israel is done questioning, I just have a few follow-up. I have a few questions that I want to ask in the instance that this doesn't get worked out, but since I'm here, I would like to ask a few questions. But I will wait for you to call the court and see what happens.

MR. MANDEL: You are free to ask

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all the questions you would like today. Let's get the court. If you are amenable, I would like to get the court on the phone first and then you can ask your questions afterwards.

MR. PANTELIDIS: That's fine.

MR. MANDEL: We can go off the record.

(Recess taken.)

MR. ISRAEL: Read back my question and let's see if we can get an answer to that.

(Record read.)

MR. MANDEL: Objection.

BY MR. ISRAEL:

Q. You understand I reformulated my question so that it might be easier for you to answer.

Do you understand what I asked you just now, that question?

MR. MANDEL: Objection.

A. I do.

Q. What is your answer?

A. The payments were for doing some



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of our design and architectural work for the project.

Q. What design and architectural work?

MR. MANDEL: Objection.

A. We went through a number of different iterations of floor plans, of renderings, of furniture layouts, of materials, of all kinds of design and architectural work.

Q. Is it fair to say that some of the iterations were paid for?

MR. MANDEL: Objection.

A. That's very hard to determine because it is work in progress and there were continued changes to everything we were doing.

Q. By the time you stopped -- by the time Medallion stopped making payments, had any iterations been provided to Medallion, any complete reiterations provided to Medallion?

MR. MANDEL: Objection.

A. Nothing that was complete. Everything was evolving all the time.

Q. Was anything ever completed, any



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designs ever completed on the job?

MR. MANDEL: Objection.

A. Towards the end when we gave Medallion and Mr. Voronchenko our final drawings, everything was completed at that point.

Q. So you gave final drawings to Medallion?

MR. MANDEL: Objection.

A. We gave the drawings -- yes, we gave a complete set of construction documents, including all kinds of renderings.

Q. And there were final drawings?

MR. MANDEL: Objection.

A. I don't know what you mean exactly by final. Those were the drawings that were completed to a hundred percent considering our architectural agreement with Medallion and Voronchenko. If they were final, it's hard for me to say because maybe Mr. Voronchenko would have made more changes to it. I don't know that.

Q. Now, did the final drawings bear any resemblance to the earlier iterations that



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were provided to Medallion Inc. at the beginning of the job?

MR. MANDEL: Objection.

A. Some things are probably similar. It was a whole process that was evolving.

Q. Things that were similar, what had been prepared by the time Medallion stopped making payments, what had been provided in terms of the drawings by the time Medallion stopped making payments?

MR. MANDEL: Objection.

A. It's hard to tell. We went through hundreds and hundreds and hundreds of drawings.

Q. So you can't -- you don't know what had been provided to Medallion by the time it stopped making payments, is that correct?

MR. MANDEL: Objection.

A. I know more or less what we gave them.

Q. Okay.

A. I don't know what you mean, when did they stop making payments because they



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made only two payments.

Q. Okay. Then that makes it easy by the time they made their second payment what had been given to Medallion in terms of drawings and designs?

A. What exactly, I don't know. I don't have all my architectural drawings here. I'm sure it can be somehow established.

Q. What would you need to establish that?

A. I don't know what I would need to establish that.

Q. Well, if you don't know the answer to the question, how will I get an answer to the question of what it will take to establish what the work was that had been provided to Medallion at the time it stopped making payments?

MR. MANDEL: Objection.

A. I don't know.

Q. So if someone were to testify from Medallion as to what had been provided to Medallion at the time it stopped making payments, you would not be in a position to

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disagree, is that correct?

MR. MANDEL: Objection.

A. I would have to see what they have to say. I know how much work we did. I know what is on the drawings. I can tell you -- I don't know. I don't really know how to answer your question.

Q. The way to answer my question is to tell the truth. I'm wondering whether or not if Medallion says what it had received by the time it stopped making payments, if you will be in a position to disagree with Medallion.

You said you don't know. Now what I'm trying to find out is, since you don't know what had been provided to Medallion by the time it stopped making payments, if Medallion were to say what that was, would you be in a position to disagree with them?

MR. MANDEL: Objection.

A. I have no answer to that.

Q. Are you refusing to answer the question?

MR. MANDEL: Objection.

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A. I'm not refusing. I said I have no answer to that.

Q. I don't know what that means. That's why I'm asking what that means.

Does "I have no answer to that" mean you don't understand, does it mean you don't know or does it mean that you are refusing to answer the question?

MR. MANDEL: Objection.

A. I actually mean that your question is very misleading and I do not want to answer your question.

Q. So you are refusing to answer the question on the basis that you think it is misleading, is that correct?

THE WITNESS: Can I say that?

Q. You can say anything.

MR. MANDEL: You have to answer truthfully.

A. Yes, I do.

Q. So you are refusing to answer the question because you think I'm asking you a misleading question?

A. Yes, I do.

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Q. What is misleading about the question?

A. I'm refusing to answer. This is not very productive.

Q. Okay. You brought a lawsuit against my client, did you not, Medallion Inc.?

A. Oh, definitely, I did.

Q. Do you believe my client is entitled to defend against the lawsuit?

A. Absolutely.

Q. But you are refusing to answer questions that it believes are appropriate and necessary to defend against the lawsuit.

Now I'm going to read the question back to you one more time. This is your opportunity to answer it or not answer it, and you will do what you want to do and we will make a record of it. But this is your last chance.

MR. ISRAEL: Could you please read back the last two questions that the witness refused to answer.

MR. ISRAEL: The record should

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2 reflect that counsel and his client are
3 having a conversation.

4 MR. MANDEL: That's correct. You
5 can.

6 MR. ISRAEL: You can go ahead,
7 read them back.

8 (Record read.)

9 Q. Now, you've heard the question
10 back again. Would you like to change your
11 answer where you said I have no answer and
12 answer the question, or do you continue to
13 refuse to answer it?

14 A. I don't know.

15 Q. Now, have you ever been presented
16 with architectural plans by a client when you
17 are starting an assignment, from a client?

18 A. Yes.

19 Q. Somebody else's architectural
20 plan?

21 A. Yes.

22 Q. When you are presented with those
23 plans, do you make an effort to determine
24 whether your client has the right to use those
25 plans?



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2 MR. MANDEL: Objection.

3 A. Usually we are presented with
4 existing conditions.

5 Q. And what does that consist of,
6 what does that mean, existing conditions?

7 A. Existing conditions reflect,
8 usually they are provided by the building and
9 they reflect what is in place in the
10 apartment.

11 Q. Would you call those architectural
12 plans?

13 A. They are architectural plans, yes.
14 No, actually, sorry, I have to
15 correct myself. They are not always
16 architectural plans.

17 Q. In the instance where they are
18 architectural plans, do you make any attempt
19 to determine whether the owner has the right
20 to use those architectural plans?

21 MR. MANDEL: Objection.

22 A. When I deem it necessary, I do.

23 Q. When do you deem it necessary?

24 A. Sometimes -- sometimes you just
25 want to make sure that you have a contact with



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2 the person that did those plans because there
3 are questions.

4 If you are supposed to work off
5 somebody else's plans, you may have all kinds
6 of questions. They may have more details on
7 these plans. They have CAD drawings,
8 computer-aided drafting documents, in addition
9 to the plan that is presented to you.

10 Q. Do you ever make an attempt to see
11 whether or not the owner has the rights to use
12 those plans before you start to use them in
13 your work?

14 MR. MANDEL: Objection.

15 A. No.

16 Q. And why is that?

17 A. I assume that the owner does have
18 the rights to use those drawings.

19 Q. Now, in your case against
20 Medallion and Garth Hayden, it is your claim,
21 I think, that Mr. Hayden didn't have the right
22 to use Triarch's plans. Is that correct?

23 MR. MANDEL: Objection.

24 A. Yes, it is.

25 Q. And is it your view that Garth



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2 Hayden was correct in assuming that the owner
3 had the right to use the plans?

4 MR. MANDEL: Objection.

5 A. I don't know.

6 Q. But when you do it and you use
7 somebody else's plans, you said a moment ago
8 that you just assume that the owner has the
9 rights, correct?

10 A. That's correct.

11 Q. So you can't fault Mr. Hayden in
12 assuming the owner has the rights here?

13 MR. MANDEL: Objection.

14 A. That's not my -- that is a
15 different thing. The drawings that were
16 actually copied by Mr. Hayden were an exact
17 reflection of our drawings.

18 ^ MR. PANTELIDIS: Move to
19 strike.

20 Q. An exact reflection, correct?

21 A. Very close reflection.

22 Q. Well, were they very close or were
23 they exact?

24 MR. MANDEL: Objection.

25 A. Very close.



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Q. Did you assume, did the drawings that were copied here, include any of the original work that you were provided with, when you first came on the job, the existing conditions?

MR. MANDEL: Objection.

A. Can you repeat your question.

MR. ISRAEL: Could you read it back, please.

(Record read.)

A. His drawings you mean, the drawings that he filed?

Q. No, the drawings that you received when you came on the job, you received copies of existing conditions, correct?

A. Yes.

Q. Were any of those existing conditions reflected in the drawings that you submitted to the Copyright Office?

MR. MANDEL: Objection.

A. It's difficult to answer your question because we based our drawings on very schematic drawings that we received and we went to the job site and remeasured every



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single wall.

Q. But you received schematic drawings. The things that are reflected in the schematic drawings, were any of those things reflected in the drawings that you registered with the Copyright Office?

MR. MANDEL: Objection.

A. I gave you the answer I can give you. There is nothing else I can add to that.

Q. Well, I'm asking you yes or no, of the drawings you were provided, of the existing conditions when you came on the job, did your final, the drawings that you registered with the Copyright Office, did it reflect any of those existing conditions?

MR. MANDEL: Objection.

A. There is no other answer I can give you. The existing conditions are what are in the place, in the apartment before you start construction.

Q. Did any of those conditions remain at the time you filed your registration plans?

A. Of course.

MR. MANDEL: Objection.



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Q. Okay.

A. We didn't destroy the entire apartment.

Q. What conditions remained?

A. Most of the partition work was still in place. Most of the plumbing and partition work remained in place.

MR. MANDEL: Objection.

Q. Is the partition work part of the design?

MR. MANDEL: Objection.

A. If you change the partition, it becomes part of your design.

Q. Well, does the partition as it exists and remained, did that comprise part of the design?

MR. MANDEL: Objection.

A. As long as it exists and remains, it is not part of our design.

Q. But is it part of the design for the apartment?

A. No, it is part of the existing layout of the apartment.

Q. So it is not part of the design,



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correct?

A. It is not part of the design.

Q. Did your design incorporate any of the existing conditions?

MR. MANDEL: Objection.

A. Yes, it did.

Q. What did it incorporate?

A. It incorporated some of the decorative aspects of the existing conditions.

Q. What decorative aspects?

MR. MANDEL: Objection.

A. How materials were used on the partitions.

Q. How materials, what does that mean, how materials were used on the partitions? I don't understand. What does that mean?

A. Did you look at the drawings?

Q. Yes, I did.

A. Then you should know what it means.

Q. I'm not asking you for your instruction. I'm asking you what that means.

MR. MANDEL: Objection.



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A. I have nothing to add to that.

Q. Are you refusing to answer the question?

MR. MANDEL: Objection.

A. Oh, my God. This is -- no, I'm not refusing to answer your question.

Q. Then answer it, please. Do you need to have it read back?

A. Excuse me?

Q. Do you need to have it read back, the question?

MR. MANDEL: Objection.

A. No, I don't.

Q. All right, so what's your answer?

MR. MANDEL: Objection.

A. I'm going to answer this question. I would like to have a break after the question.

Q. Sure. What's the answer?

A. My answer is you can design a wall, meaning, you can create a certain layout for wood panelling where you can insert mirrors or metal strips into the design of the wall. You can have a stone baseboard.

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What else can I answer?

You can insert a door or a window into a wall.

Q. And was that, did that happen here?

MR. MANDEL: I think we are going to take a break now. She asked for a break.

Q. She didn't answer the question. I'm asking you what specifically was applied here?

A. All the walls in the entire apartment were different.

Q. And it had designs involved in the walls?

A. Not all the walls.

Q. Some of the walls?

A. Some of the walls, yes.

MR. ISRAEL: Now you can take your break.

THE WITNESS: Thank you.

(Recess taken.)

MR. ISRAEL: We will go back on the record.

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BY MR. ISRAEL:

Q. Did Mr. Voronchenko have any initial ideas about the renovations that he wanted in the apartment that you were working on?

A. Yes, he did.

Q. What did those ideas consist of?

A. He liked art deco very much.

MR. PANTELIDIS: What was that?

THE WITNESS: Art deco.

(Discussion off the record.)

Q. Did he make any particular suggestions as to what, more specifically, he would be interested in having in the apartment?

A. He wanted to have a library in the apartment.

Q. Is there anything else that he wanted to have?

A. He wanted to make it really grand.

Q. Did he give you any other specific ideas that he had in mind?

A. He had some alabaster Lalique panels.

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Actually, I don't know if they are alabaster. They are the Lalique panels that he wanted to incorporate in the apartment.

Q. Were they incorporated?

A. They were incorporated, yes.

Q. Where were they incorporated?

A. We incorporated them into the dining room doors.

Q. Were there any other ideas that he had regarding the renovations?

A. He needed to create more closet space in the master bedroom.

Q. And did he give you any specific idea of what he wanted in terms of closet space?

A. No. Only a lot. Only a large amount of closets.

Q. Did he bring any materials to the initial meeting that you had with him? And I know you testified about an initial meeting the other day and you may have touched on the subject, but what I'm asking you is if he brought any materials with him. And, if so, what those materials were to the initial

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2 meeting.

3 A. The initial meeting, no.

4 Q. Did he bring any materials to any
5 subsequent meetings with him?

6 A. We did receive material at some
7 point, but he didn't bring it. We did
8 receive, I think, if I remember correctly, we
9 received some material by courier at some
10 point.

11 Q. Was it before you started work?

12 A. No, after we started work.

13 Q. What was the material you received
14 by courier?

15 A. A piece of wood panelling.

16 Q. And what was the significance of
17 that piece of wood panelling?

18 A. It's the kind of wood he liked.

19 Q. Did you use that type of wood?

20 A. Yes, we did.

21 Q. What type of wood is that?

22 A. Palisander.

23 Q. I should know that.

24 Were there any other things that
25 you received from Mr. Voronchenko or from

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2 anyone else in connection with the job that
3 might influence your preparation of the
4 designs for the job?

5 A. We saw some drawings that Mr.
6 Voronchenko's office gave or sent us. I don't
7 remember. There were renderings representing
8 a lot of that wood in the paneling.

9 MR. PANTELIDIS: Dead wood you
10 said?

11 A. That wood, palisander wood.

12 Q. And there were drawings containing
13 the palisander wood details?

14 A. No, they didn't have any details.
15 They were just renderings, three-dimensional
16 representations.

17 Q. That included the palisander wood?

18 A. Yes.

19 MR. MANDEL: Make sure he finishes
20 the question so the court reporter
21 doesn't have any difficulties taking it
22 down.

23 Q. Did you use any of those plans
24 that included the palisander wood in your
25 drawings throughout the project?

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2 A. No, we did not. We did not.

3 Q. Now, you stated at the 5/9/2012
4 deposition, that Voronchenko brought plans
5 with him at some point, one of the meetings
6 that you had or some meeting he brought plans
7 with him. Do you recall that testimony?

8 A. I do.

9 Q. What plans did he bring with him?

10 A. From what I remember from that
11 testimony is I did not say that he brought
12 plans, but at one of the meetings we saw plans
13 that he had.

14 Q. It could be that my associate's
15 transcription wasn't correct. She wrote down
16 that you brought plans. But you saw plans at
17 one of the meetings?

18 A. Yes.

19 Q. And what were those plans of?

20 A. I don't know exactly, but I think
21 they were paper, I think they are just paper
22 something.

23 Q. They were just what?

24 A. I don't know exactly what they had
25 on them. I don't know if they were plans of

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2 the apartment.

3 Q. Did you retain copies of those
4 plans?

5 A. No.

6 Q. Or a copy?

7 MR. MANDEL: Objection. Please
8 let him finish.

9 Q. So you were shown the plan and
10 then it remained with Mr. Voronchenko?

11 MR. MANDEL: Objection.

12 A. We were not shown the plans. They
13 were lying -- actually, I remember where -- on
14 the kitchen table in his apartment, in the new
15 apartment.

16 Q. And do you remember what those
17 plans consisted of?

18 MR. MANDEL: Objection.

19 A. No, I don't.

20 Q. Do you remember why you were shown
21 the plans?

22 MR. MANDEL: Objection.

23 A. We were not shown the plans.

24 Q. They just existed in the
25 apartment?

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A. They were sitting on the table.

Q. Did anyone direct your attention to the plans as they were sitting on the table?

A. No.

Q. So just so I'm clear, you can tell me if I am wrong, if I understand you correctly, what you are saying is you went to the apartment, there were plans sitting on the table, no one discussed the plans and no one directed your attention to the plans?

MR. MANDEL: Objection.

A. That's correct.

Q. Did they bring, did Mr. Voronchenko or Mr. Braverman bring any images with them to any of the initial meetings that you had before you started work on the project?

MR. MANDEL: Objection.

A. No, not at the initial meeting.

Q. At any point did they bring any images to your attention?

A. Yes, they did.

Q. When did they bring images to your

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attention?

A. At one of the meetings Mr. Voronchenko had photographs of furniture that he liked or he was in the process of buying.

Q. Did you incorporate any of the images into any of your drawings?

MR. MANDEL: Objection.

A. We did at some point, yes.

Q. What images did you incorporate into the drawings?

A. I don't remember which ones exactly, but in some of the living room drawings I think we represented one or two pieces of the furniture he liked.

Q. Were any of the designs intended to be harmonized or consistent with the images that you were presented?

MR. MANDEL: Objection.

Q. Do you know what I mean by that question?

A. Yes, I do.

He generally liked art deco and the furniture he was showing us was in the art deco spirit, so that is what we were trying to

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work with.

Q. And you tried to make the designs consistent with the images of the furniture that he showed you, is that fair?

MR. MANDEL: Objection.

A. No. We did not. We did not. No, we did not.

Q. So let me just make sure I'm clear about this. So you are shown the images. They had an art deco feel to them. And there was no effort made, however, to have the designs consistent with the specific items, furniture, what-have-you, that is in the images. Is that correct?

MR. MANDEL: Objection.

Q. There was none, I'm saying?

A. There was some. There was some.

Q. There was some effort to make the designs consistent with the images you were shown?

A. Yes.

Q. All right, now I'm going to ask you to be as specific as you can in telling me what that effort consisted of. In other words

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you are doing the designs and you are saying there is some effort to make the designs consistent with the images you are shown. I want to know what that effort consists of, if you can tell me.

MR. MANDEL: Objection.

A. Let's say, for example, I mean, this was a process, a transition. Let's say he had a piece of furniture that he was buying for the dining room, a buffet. We would try to see if there was a specific wallpaper that would incorporate his piece of furniture.

Q. And the wall paper that you selected would be reflected in the drawings?

A. Yes.

Q. And are those, was that wallpaper reflected in the drawings that were registered with the Copyright Office?

MR. MANDEL: Objection.

A. We had different versions of wallpaper with different pieces of furniture. The final wallpaper that we selected was not reflecting any piece of furniture that he had chosen.

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Q. How did you select the final wallpaper?

A. I looked at many different versions of, very representative, naturalistic wallpaper that was consistent with the spirit of art deco that he liked.

Q. Did he ever tell you that he liked that particular wallpaper, did he ever approve of it, the final wallpaper that you included in the drawings that were registered with the Copyright Office?

A. He saw pieces of it before we did our final presentation. I do not know, after that he saw it. I do not know because he disappeared.

Q. So you don't know whether he approved of it or not?

A. In the end, he approved it at the time that he saw it. When we gave him the finished product, he liked it. He did not approve or say anything. He took our work and left.

Q. Is it part of your claim in this case that the wallpaper was part of the

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design, the copyrighted design that you are claiming was infringed in this case?

MR. MANDEL: Objection.

A. Yes, it is.

Q. The wallpaper, does it contain a pattern on it?

A. Yes, it does.

Q. Did you obtain the rights from the people who made that pattern on the wallpaper to use their copyrighted pattern in your work you registered with the Copyright Office?

MR. MANDEL: Objection.

A. No, I did not.

Q. Does your registration reflect the fact that you are using the wallpaper which is somebody else's work in your registered material?

MR. MANDEL: Objection.

A. No, not to my knowledge. May I add something to your remark.

Q. Please.

A. We are using lighting fixtures, we are using furniture. We are using materials in our three-dimensional drawings. What we do

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is incorporate it with -- into our design. So what is copyrighted is not the object itself, but the design that we do and how we represent it.

Q. With all due respect, wallpaper is different than light fixtures, but you can talk to your lawyer about that later on.

MR. MANDEL: Objection.

A. Okay.

Q. Now, was there more than one type of wallpaper that was incorporated in your designs?

MR. MANDEL: Objection.

A. To my recollection, there was one.

Q. Is there a name that you could refer to the wallpaper as so I know exactly what you are talking about? Is there a particular pattern on it, or how do you refer to it?

A. There is a particular pattern. I don't know it by heart.

Q. You don't know what the name is?

A. No, I wouldn't remember it.

Q. During the time that you were

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working on the project, did Mr. Braverman or Mr. Voronchenko ever express any scheduling or timing objectives to you?

MR. MANDEL: Objection.

A. Yes, they did.

Q. And what did they consist of, their objectives?

A. They were trying to get the work done as fast as possible.

Q. Were there any specific time frames that they had in mind?

A. Basically, they were trying to get the work done within a few weeks or a month or two. It was from the beginning we told them that was not possible.

Q. Did you tell them at all what was possible in terms of timing?

A. I don't remember exactly what I told them.

Q. Well, I'm not asking exactly what you told them. But did you tell them anything with respect to what they can expect in terms of timing?

A. We probably told them what the

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usual schedule is for producing a whole set of drawings.

Q. Were you working in accordance with what you suggested was the usual schedule?

A. Yes, we were.

Q. Were there any delays on the job of any kind?

A. There were some delays on the job because we had to continually go through revisions of new iterations of the design.

Q. And you would attribute that to Mr. Voronchenko's resistance to finally approving of some design. Is that correct?

A. I would attribute that to Mr. Voronchenko's continual revisions, yes, and new ideas that he wanted to incorporate into his design.

Q. And you would redo the design based upon the new ideas that he wanted to have incorporated, correct?

A. That's correct.

Q. Can you give me some examples of what those were.

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A. Yes, I can. We redesigned the panelling of the entrance foyer and the door configuration and the floor treatment many times. We redesigned the library and the library doors and the layout for the books and the wall treatment many times.

We redesigned the master bedroom a number of times.

Q. Are you done?

A. Yeah.

Q. Now let's take it back a little bit.

In terms of the floor treatment did Mr. Voronchenko tell you, give you specific instructions as to what he was looking for for a floor treatment?

A. No, he did not.

Q. So did he just say redo it?

A. I don't like it he would say.

Q. He would say I don't like it and he just left it up to you to come up with something new?

A. Yes.

Q. I think I may have written this

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down wrong, but I thought you also said the wall designs that he had you redo or --

A. Change, yes, modify, change.

The thing is that every time he was asking us for changes, since he demanded to be working with renderings and he wanted to see three-dimensional drawings, we had to go through a whole process of revising schematic design, design development and construction documents to get these three-dimensional renderings produced.

Q. Did it work that way through the whole thing?

A. Yes.

Q. Through the whole project?

A. Yes.

Q. You were doing construction drawings from the beginning?

A. Yes. When we were asked to present him with renderings because he could not visualize architectural drawings, we immediately started producing renderings and you can only produce them when you have pushed the construction documents to a certain

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degree.

Q. Let me ask you this. When you were doing the renderings, the construction renderings, did you subcontract any of the work that was involved, to anyone else? Did you have anyone else assist you in that process?

MR. MANDEL: Objection.

A. We hired some people from outside to do the programming for the three-dimensional drawings.

Q. And who is that that you hired from outside?

A. That is a company called Orchid.

Q. Now, when they did the -- they did the computer --

A. Yes.

Q. -- the computer renderings, is that correct, am I saying that correctly?

MR. MANDEL: Objection.

A. That's correct.

Q. And did they make any -- what did their contribution consist of, if anything, beyond just technical know-how?

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A. Nothing beyond technical know-how.

Q. So it was a process completely bereft of any kind of creative input?

A. Completely.

Q. You gave them measurements, you gave them dimensions, they put in the computer and it spat out a three-dimensional image, computer-generated image? Yes?

A. Yes.

MR. MANDEL: Just, please, let him finish the question.

THE WITNESS: Yes.

Q. Whose idea was it to use the Italian tiles?

MR. MANDEL: Objection.

Q. The Italian tiles that were used on the job that we see in all the e-mail communications. You don't know what I'm talking about?

I'm only saying you don't know what I'm talking about because you are looking at me with a blank expression. You don't know what I'm talking about?

A. No, I don't. By tiles, I don't

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know what you mean.

Q. Okay, I will pull out the e-mails in a minute.

A. Yeah.

Q. Were there people located in Italy who were involved in doing any portion of the work on this job?

A. Yes, there were.

Q. And what did the people in Italy do?

A. They -- they were producing millwork, mostly millwork but they were also subcontracting stone work and I guess other parts of the project from architectural drawings.

Q. Now, what I would like you to do is take me through the process by which the millwork and the stone work is incorporated in the architectural drawings that you prepared, if you can, please?

MR. MANDEL: Objection.

A. In relationship to the people in Italy, or in general?

Q. Well, the work that they are doing

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in Italy presumably was for Medallion, correct?

A. Yes.

Q. So I'm asking you specifically what they would do, what the people in Italy would do with the designs that you are preparing to turn out millwork or stone work for Medallion, how that process worked.

A. What they would do is they would take our drawings, make a precise take-off from the drawings, produce their own production documents, production drawings, and three-dimensional drawings and with all the dimensions on them, and then fabricate. You know, they have machinery to mill wood. They would use our construction documents to see how the detailing works.

Usually, what happens with a cabinet maker, they use architectural drawings, then they make shop drawings out of it and from the shop drawings they produce their work.

Q. Now, did you see any of the three-dimensional drawings or production

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drawings you just said they did, after they had been created? Did you ever see them afterwards?

A. I did.

Q. Why did you see them, were they shown to you for input or just so you would know what they were doing, or why was it that you came to see these drawings?

A. After we were terminated by Mr. Voronchenko, since it was always clear that the people in Italy were going to produce the project and actually had asked for our documents and had received our documents from us previously, I wanted to know if they were actually producing their work from our drawings, if they are actually copying our drawings.

Q. I understand what you are saying.

A. And I went to see them personally.

Q. I understand what you are saying. But my question was a little bit different. This is what I'm asking you. Did you see the drawings that were made by them at the time they were going to be implemented so they do

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the drawings based on your drawings?

A. Um-hum.

Q. For the purpose of having input into their drawings. In other words, did they present them to you so you could say whether or not there was something accurate or inaccurate about their drawings?

MR. MANDEL: Objection.

A. No, I did not.

Q. Is it your belief that their drawings were used in connection with the apartment, for the apartment?

MR. MANDEL: Objection.

A. I do know so because I went to see them in Italy, they showed me those drawings and they actually showed me part of what they were building off those drawings.

Q. Now, I don't mean to be argumentative with you, but I'm asking you, this is the question, do you believe that they had the right, the people in Italy, the people who did the millwork and the stone work, did they have the right to use your work in producing drawings for Medallion?

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MR. MANDEL: Objection.

A. No, they don't -- they did not have the right.

Q. In other words, just so we are clear, you say Garth Hayden didn't have the right and you sued Garth Hayden. It is also your belief that the mill workers, the people doing the designs in Italy, the millwork in Italy, didn't have the right. Correct?

MR. MANDEL: Objection.

A. Correct.

Q. Why didn't you sue the people in Italy?

MR. MANDEL: Objection. To the extent you have some reason that's outside of anything that was discussed with your lawyers or was the product of thinking with your lawyers.

But to the extent the answer is, the product was some discussion you had with lawyers, I instruct you not to answer.

Q. Why didn't you sue the people in Italy?

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A. Because they were hired by Mr. Voronchenko and we were suing Mr. Voronchenko for the work.

Q. Well, Mr. Hayden was hired by Medallion also, was he not?

A. Yes, he was.

Q. But you sued Mr. Hayden?

MR. MANDEL: Same objection. To the extent your decision to sue Mr. Hayden has anything to do with the thinking of your lawyers or communication you had with lawyers, I instruct you not to answer. But to the extent you have any independent thinking on why you did or did not sue Mr. Hayden, you are free to answer.

Q. Look, I'm tired. I don't want to argue too much. I don't want to know anything a lawyer told you. I want you just to think about this, about your own thoughts, why is it that you sued Mr. Hayden, didn't sue the people in Italy when both of them you claim were using your work in rendering work for Medallion?

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MR. MANDEL: Same objection.

A. We sued Mr. Hayden I guess because he was in New York and actually directly using our drawings for filing for the project. We did not sue the people in Italy, there is no reason to. We were thinking that suing Mr. Voronchenko for the project was taking care of that.

Q. Did you ever have discussions with the people in Italy suggesting that you might sue them?

MR. MANDEL: Objection.

A. No.

Q. Was there any demand made upon the people in Italy to pay something because they used your designs in connection with work that was being done on the apartment?

A. To pay us?

Q. Yes.

A. No.

Q. Did you receive any written statements from the people in Italy regarding this case?

A. No.

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Q. When you had discussions with the people in Italy regarding the drawings that were used in connection with the apartment, what was the name of the individual or individuals that you spoke with in that particular regard?

A. I spoke -- I have to look up the names. I don't remember it. But I spoke with a lady who was the owner, together with her husband of the company. And I spoke to one of the employees. His first name was Alberto. He was my correspondent also when we had sent them the drawings previously.

Q. Now, did you tell them that in your view that Medallion did not have the right to use the work that they created, meaning that the Italians created, because it was based upon your drawings?

A. I did, yes.

Q. Were they surprised to learn from you that they didn't have the right?

A. Yes.

Q. Did they apologize to you?

A. They kind of did.

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Q. And they showed you the drawings that they had that they made based upon your drawings for the apartment, correct?

A. Yes, correct.

Q. And did you keep copies of the drawings that they made?

A. No, I did not.

Q. Why is that?

A. I didn't ask them for copies. I felt a little bit intimidated. I was trying to find out what was happening. I wasn't sure when I went there that they were really doing this work. I was more sure when I saw the drawings.

Q. I think what you probably meant to say is you felt awkward, right?

A. I felt awkward, yes.

MR. MANDEL: Objection.

Q. I only said that because I think you probably didn't mean to use the word intimidated. I wanted you to reflect on that.

A. Yes.

Q. It is true, you felt awkward?

A. Yes.

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MR. MANDEL: Just try and let him finish the questions.

Q. Now, you mentioned three people in connection with the drawings, that you spoke to in Italy. Did all three of those, the people that you spoke with -- did you speak to all three of them regarding this specific issue, namely, that drawings based upon your work were being used by Medallion?

A. Yes.

Q. All three of them?

A. Yes.

Q. Did they do anything original, was there any input that they had in their drawings when they made their drawings based upon your drawings?

Do you follow what I'm saying?

A. I do.

Not that I saw.

Q. So as far as you could see, they were direct reproductions?

A. As far as I could see, yes.

Q. Let me ask you a lawyer question as a nonexpert in your area.

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Q. Why then wouldn't they have -- why was there a need for them to do drawings as opposed to just use your drawings?

A. Because they need to fabricate it and every cabinet maker -- that's what I was explaining before -- when they fabricate, they actually use the architectural drawings for dimensions but they may want to do the fabrication itself, the construction process somehow differently depending on the machinery they are using. So what they also told me in Italy, they walked me through the entire process of how they are working on the project, is they are doing these drawings in order to make a direct take-off for the amount of wood, for example, they have to buy.

Q. I'm still not getting it. I appreciate what you are saying, but is there some different quality then or dimensions or something that is different in their drawings from your drawings that would facilitate that process for them?

MR. MANDEL: Objection.

A. There may be some different

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dimension, maybe the thickness of the wood is different, but the size of the panel has to remain the same.

Q. You understand, I'm just trying to figure out why they need to have their drawings?

A. I understand.

Q. And I'm trying to see how it is transferred?

A. If we had them here, I could --

MR. MANDEL: Just let him finish.

Q. No, that's okay. I want to hear what you are trying to say.

A. If we had them here, I could show you the exact difference between what we do and how they represented themselves and what remains the same and where they need to make specific adjustments.

Q. Did you ever discuss at the beginning of the job, a budget for what the job would cost for Medallion?

MR. MANDEL: Objection.

A. I think that for the contract purposes we determined, there was a sum, a

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certain amount of money that was determined to be okay, but this is what we are going to base the contract on. But we never discussed the -- the budget was never an issue.

Also, every time we were doing, we were using certain materials that were expensive, Mr. Voronchenko always said he was in construction, he knew how much things were costing, he was completely comfortable with everything and the budget was never an issue.

Q. But he never said money is no object, did he?

A. Pretty much.

Q. He did?

A. Yes.

MR. MANDEL: Objection.

Q. Was it Mr. Voronchenko who said that or was it Mr. Braverman who said that?

A. Mr. Voronchenko.

Q. Did Mr. Braverman ever express any ideas that were divergent with Mr. Voronchenko view on the subject of the cost about where money wasn't an object?

A. No.

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MR. ISRAEL: I'm about to go into a new area and I still have -- let's go off the record.

(Discussion off the record.)

(Recess taken.)

MR. ISRAEL: Back on the record.

MR. MANDEL: Earlier in the day we had a discussion about objections at depositions and Mr. Israel and I stipulated that at those depositions in which our clients' witnesses were being deposed, with the exception of objections regarding the attorney-client privilege and other similar privileges, the only thing that would be said by the lawyer representing the witness is the word "objection." No other detail or explanation will be provided with respect to objections other than the attorney-client privilege.

MR. ISRAEL: What I said is I'm going to follow the federal rules which allow you to only make objections as to form and it doesn't allow for speaking

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objections. That's what I said.

MR. MANDEL: I misunderstood our stipulation. I thought I was --

MR. ISRAEL: I wasn't stipulating to anything. I just said I'm following the federal rules.

If you think it is following the federal rules to make speaking objections like was going on earlier, then do it. All I'm telling you is I am going to seek a ruling from the court. It is in my view that you are not allowed to do what you were doing earlier. I'm going to comport myself with the federal rules and I'm not going to make speaking objections. That is my intention.

MR. MANDEL: All right, there has been a confusion apparently as to what the stipulation was. I suppose it is my fault for not putting it on the record earlier.

So it appears there is absolutely no stipulation whatsoever. Mr. Israel

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is saying that all we have to do is follow the federal rules and in fact we did not make any agreement earlier today.

MR. ISRAEL: Can I go on now?

MR. MANDEL: Sure.

BY MR. ISRAEL:

Q. Do you remember at your last deposition, the last session, we were discussing the shop drawings that Mr. Hayden submitted to the Building Department in the beginning to get the Building Department's approval. Do you remember that discussion?

A. Yes. They are called -- those are not shop drawings. They are architectural drawings.

Q. Forgive me, architectural drawings.

A. Yes.

Q. Is it fair to say that those architectural drawings reflected the overall features of the apartment at the time they were filed?

MR. MANDEL: Objection: asked and

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answered.

A. Correct.

Q. Now, were any of those overall features that were reflected in the architectural drawings when they were filed by Mr. Hayden, were they, did they appear in the architectural drawings that were filed for the purposes of registering your copyright?

MR. MANDEL: Objection.

A. No.

Q. So there was nothing common -- correct me if I am wrong, there is nothing common between the architectural drawings that were filed by Mr. Hayden with the Building Department, and the drawings that were filed with the Copyright Office?

MR. MANDEL: Objection: asked and answered several times.

A. There were things in common, the existing conditions.

Q. Is it your testimony that all Mr. Hayden filed with the Building Department when he was filing the architectural drawings, all those architectural drawings reflected were

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existing conditions?

MR. MANDEL: Objection.

A. No.

Q. It included something beyond existing conditions?

A. It did.

Q. What did it include beyond existing conditions?

MR. MANDEL: Objection: asked and answered extensively.

Q. You can answer.

A. It included elevations. There were elevations of parts of the apartment that were actually showing our designs. And also parts of the plans showing our design.

Q. Now, I think there may be some confusion. I'm talking about the original plans, the architectural plans that were filed by Mr. Hayden to get approval by the Building Department.

A. He did two filings.

Q. I know that.

A. You said the first filing.

Q. I did say the first filing.

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A. Okay, sorry. I have to correct what I said.

Q. And that's why I'm giving you an opportunity to do that because what you said before would be conclusive that you don't have a claim and I'm giving you an opportunity to correct it because I don't think you meant to say that.

A. No, I did not.

Q. So here is your chance. What I was asking you before is, the drawings that were filed by Mr. Hayden originally, what did they include that was additional to the layout of the original layout?

A. The existing conditions.

Q. The existing conditions of the apartment?

A. I don't know exactly. I would have to look at the plan and point it out.

Q. But there were differences, correct?

A. There were some differences, yes.

Q. Now, those things that were different from the existing conditions, did

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any of those differences remain in the later version that was filed by Mr. Hayden with the Building Department?

MR. MANDEL: Objection.

A. I don't know. I never compared his previous filing to his subsequent filing. I only compared the subsequent filing to our drawings.

Q. With yours, okay.

Now, here is what -- follow me with this. I'm explaining why I'm a little confused with what you just said.

You say that you are aware that the original drawings that you filed with the Building Department contain something beyond the existing conditions.

MR. MANDEL: Objection.

A. Correct.

Q. You also say that you are aware of how the later drawings that he filed with the Building Department reflect the work that you did, your designs?

A. Correct.

Q. Triarch's designs. So if you are

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aware of the three sets of drawings to that extent, I'm confused as to why you wouldn't be aware of how the second set of drawings that he filed with the Building Department wouldn't include some of the features in the first set of drawings that he filed with the Building Department?

MR. MANDEL: Objection:

mischaracterizes prior testimony.

Q. You understand what I'm saying, correct?

A. I do. I just don't remember. I did not make that comparison. I don't remember exactly what he maintained from his previous filing.

Q. Okay, that's fair.

Is it fair to say that Mr. Hayden's original filing with the Building Department contained some original work?

MR. MANDEL: Objection.

A. It is fair to say that.

Q. Is it fair to say that the second set of drawings that he filed with the Building Department, Mr. Hayden that is,

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contained some original work that was not Triarch's?

MR. MANDEL: Objection.

A. I can't answer you directly. I would have to see it in front of me.

Q. You don't remember?

A. Yes.

Q. I'm trying to avoid taking out those documents, but we're going to have to do that and we will do it in a minute.

MR. ISRAEL: We're going to do that now. We're going to take out the drawings from your pile.

(Discussion off the record.)

MR. ISRAEL: So what I am doing now is I'm putting on the table Defendants' Exhibits 7, 8 and 1 which consist of Triarch's drawings, No. 7, the amended plan, Medallion's or Garth Hayden's amended plan, which is Defendant's Exhibit 8; and the original plan or what purports to be the original plan that was filed by Garth Hayden which is Defendant's Exhibit 1.

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I'm putting them over here so I'm going to ask you now, if you can, to tell me whether or not any of the elements that were contained in Exhibit 1 which is Garth Hayden's original plan to the Building Department, remained in Garth Hayden's amended plan which is Exhibit 8.

MR. MANDEL: Objection.

A. This is the demolition plan. I would have to look at the architectural plan.

Q. What's missing from the demolition plan?

MR. MANDEL: Objection.

A. This is just easier to see what the new construction is.

Q. What's easier to see? What the new construction is?

A. On the new construction, it is easier to see what is different from the original filing than from the demolition plan.

Q. I'm sorry, I'm really trying. In terms of referring, could we refer by number to the three plans, explain to me the

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difficulty you are having in making the comparison?

A. It is easier and more clear to see what the difference between the two filings is from the construction plan than from the demolition plan.

Q. Are you saying that you filed both a demolition plan and a construction plan?

MR. MANDEL: Objection.

A. Yes, that's what he did. Yes. This is, you have plan A-1, A-2, A-3, A-4, A-5.

Q. Right.

A. On the second plan. On the second filing and you only have plan A-1, A-2, A-3 and A-4 in the first filing.

Now, in order to compare apples to apples, it is more clear to look at the A-2 plan which shows the new construction.

Q. So the one that we are coming up short on is the original plan, that is the one that is incomplete, correct?

A. No, everything is complete here. It is just that the first sheet of a filing is

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a demolition plan. That shows the walls that are going to be taken out.

Q. I see.

A. If you want to compare what the difference is between the two filings, the most clear approach is to take the construction documents which is A-2, the actual new construction.

Q. I see. So can we work off A-2?

A. Yes, that's what we are doing here.

Q. I was completely confused by what you are saying.

A. Yes, I'm sorry, I was not clear.

Q. No, no, now I understand. It's okay.

MR. MANDEL: Same objection.

A. Between the previous filing and the amended plan, you asked me what the same things are that remain.

Q. If there was anything that remained constant, if there was anything that followed through on the subsequent filing.

MR. MANDEL: Objection.

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A. Yes, there are actually, there is actually one wall that remains the same.

Q. Can you identify that wall?

A. In the new construction. It is the wall between the living room and the library, the new library.

Q. Is that the only thing that remained the same?

A. Yes, that's the only thing that remains the same, including the closet that is part of the library.

Q. Now, is that one wall that remained the same also in your drawing?

A. Yes, it is.

Q. Also in Triarch -- okay. Go ahead, I'm sorry. Are you finished with your answer?

A. It is, but the dimensions are different. We are creating an opening in the same wall. This wall here.

Q. All right.

A. This here is the same thing over here and everything else is different in these two filings.

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Q. To your mind, what are the most salient, what are the most outstanding differences between the filings?

MR. MANDEL: Objection.

A. The whole bedroom area is different. This, the configuration here, this piece of the bedroom area here.

Q. Let's try and see if we can get some clarity so we have a clear record. What piece is different?

A. The entrance area to the bedrooms.

Q. Yes.

A. Is different, including the closet, the entrance to the master bathroom and the layout of the closets is different.

Q. What else?

A. The configuration of the foyer is different. And the layout of the bathroom is different, the powder room, I would say, bathroom.

MR. PANTELIDIS: Bathroom 3?

THE WITNESS: Yes.

Q. Are there any other differences?

MR. MANDEL: Objection.

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A. The entrance, the entrance from the main hallway to the bedroom is changed; is different.

Q. That's it?

A. That's it. That's all they are doing basically.

Q. Okay. And all of those differences that you just identified, are they all things that can be found in Triarch's drawings?

MR. MANDEL: Objection.

A. Most of the them; not all of them.

Q. Which of the ones that you just identified would not be found in Triarch's drawings?

MR. MANDEL: Objection.

A. The configuration of the foyer.

Q. The second filing by Hayden doesn't reflect, is different, the configuration of the foyer in the second filing by Hayden is different from the one that is in Triarch's drawings?

MR. MANDEL: Objection.

A. That's correct. The plan.

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Q. The plan?

MR. MANDEL: Objection.

A. Yes.

Q. What other differences are there of the items that you said are different between the two filings that were made by Mr. Hayden to the Building Department?

MR. MANDEL: Objection.

A. Can we go to the next plan which is A-3.

Q. We can so long as we are still talking about the things that you identified as different.

A. Yes.

Q. Okay. Yes, A-4, A-3 here, A-4 here. Just looking at the same kind of drawings.

MR. MANDEL: We are.

MR. PANTELIDIS: We are looking at A-3 on the original Garth Hayden plan and A-4 on the subsequent Garth Hayden plan.

THE WITNESS: Correct.

MR. ISRAEL: Thank you for that.

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A. Let's look at the closet and entrance sequence to the master bedroom. This is his previous filing; this is his actual filing.

Q. You mean his amended filing?

A. His amended filing, yes.

Q. Okay.

A. This reflects the Triarch design.

Q. And the Triarch design, as long as we are on the subject, the Triarch design, does that include anything that was contributed by Mr. Voronchenko or by anyone else?

MR. MANDEL: Objection.

A. No.

(Record read.)

Q. So we covered that.

Now, what other ones? We are going through the list of things you identified as being different between the first Garth Hayden filing and the second Garth Hayden filing and I asked you to identify which of those differences is not found, I think I asked you, not found in the Triarch

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filing?

MR. MANDEL: Objection.

A. Oh, not found. That's different.

Q. I'm not sure if I asked you not found or found. I forget. So let's, from this point on so we are perfectly clear, let's say --

A. I understand.

MR. MANDEL: Hold on. The record is not clear. So let's see what he is asking you.

Q. What I'm asking you, what we just identified, we identified things that are different --

MR. PANTELIDIS: Of the things she identified that were different from the original plan and the amended plan, she identified one thing, the configuration of the foyer that was different on the Garth Hayden's amended plan versus Triarch's plan.

She then identified the closet and the entrance sequence of the master bedroom which she believes Garth

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Hayden's plan reflected Triarch's plan.

MR. ISRAEL: Okay, got it.

Q. So let's continue from there.

A. Now, if I understand well, you want me now to tell you what is different from his previous filing to this filing, and then subsequently to that, what is different from this filing and Triarch's filing?

Q. And this filing meaning the amended filing.

A. The amended filing, yes.

Q. Yes.

MR. MANDEL: Objection.

A. Well, all of the elevations on A-3, previous filing, compared to A-4, amended filing, are changed. There are, A-4 reflects new drawings that he did not have in his previous filing.

Q. Vis-a-vis the elevations?

A. Yes.

Q. And those elevations are consistent with the elevations that are in Triarch's drawings, correct?

A. Some of them are, yes. Not all of

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them.

Q. Not all of them. All right. Which ones in the amended drawings, the second filing, are consistent with the elevations in the Triarch filing?

MR. MANDEL: Objection.

A. The library elevations.

Q. Those are consistent?

A. They are consistent.

Q. Which ones are not consistent?

A. Some of them, I don't even locate them. Let's see.

Elevation A, master bedroom elevation.

Q. In the amended drawings?

A. On the amended drawings. Part of elevation B, part is consistent with Triarch drawings, part of it is not.

Q. But A was different, right?

A. A is different.

Q. B, part is, part not?

A. D entirely consistent.

C entirely consistent.

Q. Okay. What else?

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A. Library elevations, A is partially consistent. B is entirely consistent. C entirely consistent. D entirely consistent.

All of these elevations are different, I don't know if I mentioned this before, from the previous filing.

Q. Let me ask you this. Is it fair to say, and I know we are in the middle of this question, this analysis, but as long as we are on this one point, is it fair to say that Mr. Hayden did some original work since the original drawings were filed because there are new things that are not in the Triarch drawings, in other words, there are new elements that are not in the Triarch drawings but are new to the amended drawings?

MR. MANDEL: Objection.

Q. So from that can we conclude that Mr. Hayden had made some original input into the drawing?

A. Yes, he did.

Q. Okay, now, could you please continue with what we were doing.

A. There is a new page in the amended

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drawings that reflects more elevation drawings. That's page A-5. Again, we have living room elevations, dining room, foyer elevations.

Let's start with the living room elevations. These are not represented -- actually, some of these are represented in a previous filing but in a different way.

Q. So let me make sure that we get a clear record. So some of the elevations, they are represented in the original Hayden filing, albeit somewhat differently from the way they are presented --

A. Yes.

Q. -- in the amended filing.

And how are they different?

MR. MANDEL: Objection.

MR. PANTELIDIS: Discussing A-5 --

A. The materials and the design work on the elevations are different.

Q. Now, are those differences reflected in the Triarch --

A. Yes, they are.

Q. Can you identify specifically so

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we know exactly what we are talking about that's different?

A. Yes. Elevation A, the decorative bronze grills, the storm work, the leather panels and the division of the leather panels are consistent.

Q. Consistent with the amended and the Triarch plan?

A. Yes.

Q. And we are talking about A-5 and the living room?

MR. MANDEL: Objection.

A. Yes. And elevation A.

Q. Now, before you go further, let me just interrupt and we'll remember where we are, but those things you just identified, the leather, the materials you stated, were any of those things sourced from the, the ideas sourced from Mr. Voronchenko? Did he say I want to have leather here, I want to have this here or something else there, that is reflected in what you are just describing?

MR. MANDEL: Objection.

A. No.

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Q. None of them?

A. No.

Q. All of them were Triarch's ideas?

A. That's correct.

Q. All right. Can you continue.

A. The only difference between elevation A and Triarch work is the decorative fireplace.

Q. Whose idea was the decorative fireplace?

A. I don't know.

Q. You don't know. Would you say that the decorative fireplace is a featured component of that drawing?

MR. MANDEL: Objection.

A. Yes.

Elevation B is totally consistent with the Triarch design except the doors, the configuration of the door, part of the door trim is consistent with a foyer-designed door that we did on this side.

Q. We have to be clear about that because the court reporter isn't catching what you are pointing at.

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A. Sorry.

Q. It is not your fault. It is a natural tendency we have.

Let's make sure we have a clear record. What are you pointing at now and what are you saying exactly that's different?

MR. MANDEL: Objection.

A. Part of the door trim, part of this here.

Q. In living room elevation?

A. In living room elevation B, the only thing that is different is part of the door trim.

Q. The only thing different from Triarch's drawing?

A. Yes, correct.

Q. Is part of the door trim?

MR. MANDEL: Objection.

Q. Now, and this is something that is also different from the original Hayden drawing, correct?

A. Yes, absolutely different.

Q. Completely different.

MR. MANDEL: Let me just note for

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the record I've got a continuing objection. We covered all of this stuff, all of these questions extensively during her full day of testimony last week. So I object to this whole line of questioning.

I don't want to interrupt for each question.

MR. ISRAEL: That's all right.

Q. Do you feel that we covered all of these details last week the way we are covering it now, all the specifics that we are covering now?

A. We did. We are doing it in a different way today.

Q. We are doing it in a different way, right?

A. Yes.

Q. Can you continue, please.

A. Elevation C, entirely consistent with Triarch drawings. Elevation D, entirely consistent with Triarch drawings.

Q. And inconsistent with the original drawings, correct?

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A. And inconsistent with the original filing by Garth Hayden.

Q. Okay.

A. Dining room, different.

Q. How so?

A. The wall treatments are different.

Q. Different from the original drawings?

A. Different from the original drawings, yes.

Q. Is there anything else that is different from the original drawings?

A. And different from Triarch drawings.

The only thing that is reflected is the elevation B stone trim around the door and leather panels.

Q. Those are the only things that are reflected in the original drawing or the Triarch drawing?

A. Triarch drawing.

Q. So that's the only thing that is the same as the Triarch drawings, correct?

A. Right. Not the -- only the stone

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trim around the door.

Q. Okay.

A. Elevation C, different.

Q. Different from the Triarch drawing?

A. Different from the Triarch drawing; different from Garth Hayden's previous filing.

Q. And, again, we are talking about the amended plans now?

A. Correct.

Q. Okay.

A. Elevation D, partially similar to Triarch drawing.

Q. What part is similar to the Triarch drawing?

A. The wood trim around the windows, the wood partitions around the windows.

Q. Whose idea was the wood around the windows?

A. Michaela Deiss's idea; Triarch's idea.

Next are the foyer elevations. With the foyer elevations the floor plan is

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different.

Q. From Triarch?

A. From Triarch and from Garth Hayden's previous filing.

I need to see the Triarch drawings for this. They are here.

Well, what is consistent are all of the materials and the design of the panels, with Triarch.

Q. Are you talking about --

A. Foyer elevations.

Q. Foyer elevations between Triarch's and between Garth's amended plan?

A. Correct.

MR. PANTELIDIS: Consistencies.

A. Consistencies are all of the materials are consistent with the Triarch materials; all of the main design lines are consistent.

Q. And inconsistent with the original?

A. And inconsistent with the original Garth Hayden filing.

Q. Okay.

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A. Some of the doors are the exact same design.

Q. Let me interrupt you for one second. We are leaving off on some of the doors of the same design and I don't want to make you lose your thought, but you don't want to miss something here.

In terms of the materials that you said were the same, isn't it the case that it is only so many options you have with materials with doors. I mean, aren't doors going to be wood in every instance?

MR. MANDEL: Objection.

A. No, they are very specific materials and designs in this particular case because the doors are part metal trim, special bronze trim with bronze edges, they have bronze and metal plates on the bottom, they have palisander wood, all leather. I mean, these are very specific doors.

Q. Is that reflected in the drawings?

A. It is.

Q. Was that material already ordered before Triarch left the job, any of it?

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MR. MANDEL: Objection.

A. No.

Q. Okay. I'm just asking you,

A. I don't know, actually. I say no, I don't know. I don't know. Because the Italians had the drawings, so I don't know how soon they started production.

Q. Okay.

A. That is pretty much it.

The elevations are different because the floor plan has changed, but all of the main design features are in the elevations, all of Triarch's main design features.

Q. Are in Garth Hayden 2, in the amended plans?

A. Yes.

Q. What else?

A. That's it. That's the end of it.

MR. ISRAEL: Okay.

(Discussion off the record.)

MR. ISRAEL: I have no further questions for you. Thank you for your patience. I know it was a little trying



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at times during the day and I appreciate your endurance.

THE WITNESS: Okay.

MR. ISRAEL: Go ahead.

EXAMINATION BY MR. PANTELIDIS:

Q. Good afternoon, Ms. Deiss. My name is Kriton Pantelidis. I represent Garth Hayden in this action.

I just have a few follow-up questions.

MR. ISRAEL: Slow and louder so she can get it.

Q. I'm just going to take a few minutes to review a couple things, if that's all right. If you need to take a break, go ahead.

A. Sure.

MR. ISRAEL: Do you want an official five to ten-minute break off the record so you can do that.

MR. PANTELIDIS: Yes. We could do that.

MR. ISRAEL: Okay, so we will take five to ten minutes.



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(Recess taken.)

MR. PANTELIDIS: Back on.

BY MR. PANTELIDIS:

Q. Were you aware at any point that your work would be incorporated into Garth Hayden's design?

A. No.

Q. You testified earlier that you delivered what you called 100 percent documents to Mr. Voronchenko. Is that correct?

A. That's correct.

Q. Did this represent -- withdrawn. Did those documents represent your understanding of the completion of your contract?

MR. MANDEL: Objection.

A. Well, our contract included also bidding and negotiation and construction management. This represented I think 80 percent of our contract.

Q. At the time that you delivered those drawings, did you have any conversations with Mr. Voronchenko or anyone from Medallion



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regarding the continuation of the services that you just mentioned?

MR. MANDEL: Objection.

A. We were -- we were supposed to find out back from them how to proceed from then on, yes.

Q. Did somebody tell you that?

A. It was obvious from the conversation that we were having. They were going to look at the drawings and then get back to us.

Q. Specifically in connection with bidding or you providing construction management services or in general?

A. In general.

Q. At the time that you delivered --

A. Sorry. I made a mistake. It is not construction management. It is actually construction observation.

Q. And you said your understanding is that there was approximately 20 percent of those services to be performed at the time that you delivered the hundred percent documents?



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MR. MANDEL: Objection.

A. There was an additional -- well, yes. There was an additional 5 percent for bidding and negotiation and 15 percent for construction observation. From my recollection, I don't have the contract right here, but that's what I remember.

Q. At the time that you delivered the hundred percent documents, did you tell Mr. Voronchenko or anyone at Medallion that they couldn't use your work to finish the project?

MR. MANDEL: Objection.

A. No, I did not.

Q. Did you at any time tell either Mr. Voronchenko or anyone at Medallion that they could not use your drawings to continue the project?

MR. MANDEL: Objection.

A. There was a discussion in the beginning of, I think there was, it was part of negotiation in the contract that they wanted to have ownership of the drawings, but that was never made part of the contract because it was not what we usually do. So

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they were aware, or actually I would say they were definitely aware of the fact that they did not own the drawings or the copyright to the drawings, however you want to call it.

Q. And that negotiation regarding ownership you said occurred while you were negotiating the contract itself?

A. That's correct. Stephen Corelli was negotiating the contract but that was part of the discussion. I vividly remember that.

Q. Do you know how that issue was resolved? Did you ever come to any agreement or did Mr. Corelli ever come to any agreement?

A. Yes, it was resolved and with the fact that they did not obtain -- I think there is a clause in the AIA agreement that specifies that and that clause was not crossed out in the document, in the original contract.

Q. At any point did you ever tell Garth Hayden that they couldn't use your work?

A. No, we had no contact with Garth Hayden.

Q. You had no contact with Garth Hayden whatsoever?

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A. I don't know. Maybe there was some correspondence at some point. But it was never an issue.

Q. But as far as you are aware, neither you nor anyone from Triarch ever, either in writing or orally, told Garth Hayden personally or anyone at Garth Hayden, that they couldn't use the drawings?

A. No.

Q. Can you tell me when you first became aware that your work was being, in your opinion, inappropriately used?

A. I think it was when I paid my first visit to Tempora Mobili in Italy.

Q. Do you know when that was?

A. No, I don't remember right now. I can find out, though.

Q. That was going to be my next question, can you find out.

A. Yeah.

MR. PANTELIDIS: Can you leave a space in the transcript and if you can provide that information to your attorney and he can provide it as well

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to all the parties.

THE WITNESS: You will remind me.

(INSERT:)

Q. You also testified to earlier that you received some 3-D renderings from Mr. Voronchenko. Is that correct?

A. That's correct.

Q. Did those renderings contain anything other than the palisander wood that you testified to earlier?

A. They contained more information, but the only similarity or the only thing that we were asked to pay attention to or to make part of our project was the palisander wood.

Q. So is it your testimony that the only thing similar between those 3-D renderings and your design is the palisander wood?

A. Absolutely. You should see them.

Q. Did you or anyone from Triarch to your knowledge ever see anyone from Garth Hayden physically copying your design?

A. No.

Q. And are you aware of anyone from

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Triarch witnessing anyone from Garth Hayden physically copying your design?

A. No.

I have to make a correction to my previous statement when you asked me about when was I, when did I, when did we become aware of the fact that they might be using our designs for the project. I don't know if it occurred before I went to Tempora Mobili in Italy. But at some point our attorneys told us to get a copy of the filing from the Department of Buildings which is what we did. And I don't remember if that was before I went to Italy or after I went to Italy.

Q. But it was around the same general time?

A. Yes.

Q. Were there any other materials reflected in your design besides what you have already testified to that were suggested by either Mr. Voronchenko or anyone from Medallion?

A. No.

MR. MANDEL: Objection.

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MR. PANTELIDIS: I think that's it.

MR. ISRAEL: If you are done I have a follow-up. Are you done?

MR. PANTELIDIS: Yeah, you can go ahead.

MR. MANDEL: You can ask questions while he is thinking. We will consent to him asking another question.

MR. ISRAEL: Oh, all right.

CONTINUED EXAMINATION

BY MR. ISRAEL:

Q. Just a couple of quick follow-up questions.

You mentioned there was one other time when you registered a copyright of your work, one other time, other than in this instance regarding Medallion. Do you recall that testimony?

A. Yes, I do.

Q. What was that other time, what did that involve?

A. I don't have a lot of -- it was a long time ago and I don't have a lot of detail

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on it because my partner, Stephen Corelli, did that, but it was, I think it was at the time of a fee dispute with a client.

Q. What was the client?

A. Harvey Keitel.

Q. You did a design for Harvey Keitel and he resisted paying you for the work that did?

A. We worked for him for two years and he did not want to pay the bill, yes.

Q. And was it your contention in that situation that he used the design that you prepared?

A. No, we were going to prevent him from using the design that we prepared.

Q. And did you bring a lawsuit?

A. I think there was a lawsuit. You know, this is a question for Stephen Corelli, not for me. I don't know if there was a full lawsuit. I think there was a lawsuit, but it didn't go to trial.

Q. You think something was filed in court?

A. I think something was filed in

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court. I don't know if it was settled beforehand. Again, that's a Stephen question.

Q. Was the filing that you made in that instance, the copyright filing that you made, was it made after you finished your work or was it made before -- and a few dispute arose; or was it made before the fee dispute arose?

MR. MANDEL: Objection.

A. I don't know. I don't remember. I don't remember a lot of details about this.

Q. Do you maintain files of that situation?

A. We usually maintain files. I don't know how far back. This might be more than ten years or something. It was quite a while ago.

Q. So other than that situation and this situation, meaning the lawsuit that we are involved in now, were there any other instances where Triarch filed a copyright registration?

A. Not that I'm aware of.

MR. ISRAEL: I just need to refer

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to one thing.

I don't have anything further. Do you have anything further?

MR. PANTELIDIS: Yes, just one more.

CONTINUED EXAMINATION

BY MR. PANTELIDIS:

Q. Are you aware of Garth Hayden or anyone from Garth Hayden ever seeing your drawings?

MR. MANDEL: Objection.

A. I'm not aware of it.

Q. Is it equally fair to say that nobody from Triarch has told you that they ever saw Mr. Hayden or anyone from Garth Hayden looking at your drawings or seeing your drawings?

A. I don't know because just reflecting on your question, we may have been asked at some point. I'm not sure, though. But we may have been asked to send them to them for review or something, because he was the filing architect. So I'm not a hundred percent sure.

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Q. Do you know when in time that possibly happened?

A. It could have been at any time between, I would say September of 2008 and December.

Q. Did anybody ever ask you to send the drawings, send your work to Mr. Hayden or Garth Hayden?

A. The same thing. That, I don't remember. I would have to find out.

Q. But as you sit here today, you don't have a specific recollection of ever sending the drawings to Mr. Hayden or ever witnessing him viewing the drawings, your drawings?

A. I never met him and I don't have a specific recollection, no.

MR. PANTELIDIS: Okay, no further questions.

MR. ISRAEL: Nothing further.

MR. MANDEL: I may have a question or two. Let's just take a two-minute break.

(Recess taken.)

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MR. MANDEL: I just have one question.

EXAMINATION BY MR. MANDEL:

Q. Ms. Deiss, earlier you testified that Garth Hayden Architects did some original work in connection with Garth Hayden's amended plans. Is that testimony correct?

A. Well, what I didn't think about is the fact that he also, I mean, there were already other architects involved in looking at the project before he was hired. So it could have been, it could have been by someone else because he was really just considered the filing architect -- no, the creative architect on the job. So, actually, I'm not sure that it was his original work on that. That's all.

Q. Sitting here today, do you know whether Garth Hayden did any original work in connection with the amended plans?

A. No, I don't know. It could have been suggested, again, by someone else. I don't know.

CONTINUED EXAMINATION

BY MR. PANTELIDIS:

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Q. So you don't know whether he did or he didn't?

A. No, I don't know. I just saw the plans, if he did the actual creative work, I don't know.

MR. PANTELIDIS: Are you finished?

MR. MANDEL: I'm finished.

Q. Do you know who the creative architect was?

MR. MANDEL: Objection.

A. The only -- when we were talking before about plans that were lying around when we had our first site visit at the Voronchenko apartment, I didn't see specific plans so I can't recall seeing specific plans but I remember looking at the signature and that was Pepe something, Pepe who later came up in other drawings that I saw. Calderin or --

Q. Pepe Calderin, does that refresh your recollection?

A. Yes. And he also spoke about a Pepe that he had worked with. I don't want to make an assumption but I know that there were other architects being consulted for the

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work.

Q. So those plans that you just mentioned that were lying around at Mr. Voronchenko's apartment, you saw the signature of Pepe Calderin on those plans but you didn't see anything else?

MR. MANDEL: Objection.

A. Yes, I think I saw that they were done by Pepe something.

Q. But you didn't see anything else on the plan?

A. No, I don't remember what was really on the plan.

MR. PANTELIDIS: Okay.

(Continued on next page.)



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M. DEISS

MR. ISRAEL: That's it. Thank you.

(Time noted: 1:17 p.m.)

MICHAELA DEISS

Subscribed and sworn to before me
this ____ day of _____, 2012.



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